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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 MICHAEL ANTHONY JONES,

8 Plaintiff,

9 v.

10 JAMES DZURENDA, *et al.*,

11 Defendants.

Case No. 2:23-cv-00793-RFB-BNW

ORDER

12 Before the Court is Defendants' Motion to Dismiss. For the following reasons, the motion is
13 granted.

14 **I. PROCEDURAL HISTORY**

15 On May 19, 2023, Plaintiff filed a Motion for Leave to Proceed *in forma pauperis*. ECF No.
16 1. On September 13, 2023, the Court issued a Screening Order differing ruling on Plaintiff's *in*
17 *forma pauperis* application, dismissing Defendants Prison Director Dzurenda, Warden Najera,
18 Caseworker Cromwell, and Warden Hutchings without prejudice, and staying the action for 90
19 days. ECF No. 4. On September 14, 2023, Plaintiff filed a Complaint alleging Fourteenth
20 Amendment procedural due process violations. ECF No. 5.

21 On February 20, 2024, an Early Mediation Conference was held. A settlement was not
22 reached, and the case returned to the normal litigation track. ECF No. 9. On April 18, 2024,
23 Defendant Linford filed a Motion to Dismiss. ECF No 12. On April 25, 2024, Defendant Linford
24 filed a Motion to Stay Discovery pending resolution of Defendant's Motion to Dismiss. ECF No.
25 14. On May 16, 2024, Magistrate Judge Brenda Weksler granted Defendant's Motion to Stay
26 Discovery. ECF No. 15. On May 23, 2024, Plaintiff responded to Defendant's Motion to Dismiss.
27 ECF No. 16. On May 30, 2024, Defendant's replied. ECF No. 17.

28 On January 15, 2025, the Court set a Motion Hearing for January 23, 2025. ECF No. 21.

1 Plaintiff failed to appear at the hearing.

2 The Court's Order follows.

3 **II. FACTUAL ALLEGATIONS**

4 The court summarizes the facts alleged in Plaintiff's Complaint that are relevant to the
5 pending motion. On January 13, 2022, Plaintiff was informed by a unit officer that he was
6 reassigned from a cell to a dormitory housing unit. Plaintiff informed the unit officer that mental
7 health issues made it difficult for Plaintiff to live in a dormitory unit. The unit officer instructed
8 Plaintiff to discuss the issue with the Southern Desert Correctional Center ("SDCC")
9 psychologist, and Plaintiff's caseworker. Subsequently, Plaintiff was instructed by his caseworker
10 to write an inmate request detailing his grievance. Plaintiff complied and submitted an inmate
11 request, asking that he be placed in a cell due to his history of mental health challenges. Later,
12 when a unit officer asked Plaintiff if he was ready to move, Plaintiff informed the officer that he
13 was waiting for a response from his caseworker regarding his request to be moved into a cell.

14 On January 14, 2022, Plaintiff was informed by a unit officer that he had been fired from
15 his job due to a pending write-up related to Plaintiff's alleged refusal to comply with SDCC orders.
16 On January 19, 2022, Plaintiff was served a notice of charges regarding his refusal to move to the
17 dormitory housing unit. At a preliminary hearing, Plaintiff pled "not guilty" to the charges, and
18 requested to call the SDCC psychologist and his caseworker as witnesses at the disciplinary
19 hearing because they were aware of Plaintiff's mental health history.

20 On January 26, 2022, Plaintiff's disciplinary hearing was held. At the hearing, Defendant,
21 Linford stated that he had made an unsuccessful attempt to contact the SDCC psychologist, and
22 checked the NOTIS electronic records which did not contain information regarding Plaintiff's
23 mental health history. Subsequently, Plaintiff was found guilty of refusing to move to a dormitory
24 housing unit. Plaintiff was advised that he could appeal the decision through the grievance process
25 and the following sanctions were imposed: "Stat loss referral" of 15 days; "loss of canteen
26 privileges" for 30 days; and "loss of phone privileges" for 30 days. Plaintiff filed a grievance
27 challenging the procedural processes and outcome of the disciplinary hearing. On April 1, 2022,
28 Plaintiff received a grievance response partially granting his grievance. Subsequently, the "Stat

1 loss referral” of 15 days, included in the original disciplinary sanctions against Plaintiff was
 2 removed. Plaintiff alleges that his Fourteenth Amendment due process rights were violated when
 3 the witnesses he identified were not present to testify regarding his mental health history at the
 4 disciplinary hearing.

5 **III. LEGAL STANDARD**

6 **A. Motion to Dismiss**

7 An initial pleading must contain “a short and plain statement of the claim showing that the
 8 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The court may dismiss a complaint for “failure
 9 to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In ruling on a motion
 10 to dismiss, “[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and
 11 are construed in the light most favorable to the non-moving party.” Faulkner v. APT Sec. Services,
 12 Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted).

13 To survive a motion to dismiss, a complaint need not contain “detailed factual allegations,”
 14 but it must do more than assert “labels and conclusions” or “a formulaic recitation of the elements
 15 of a cause of action. . . .” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp.
 16 v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains
 17 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,”
 18 meaning that the court can reasonably infer “that the defendant is liable for the misconduct
 19 alleged.” Id. at 678 (internal quotation and citation omitted). The Ninth Circuit, in elaborating on
 20 the pleading standard described in Twombly and Iqbal, has held that for a complaint to survive
 21 dismissal, the plaintiff must allege non-conclusory facts that, together with reasonable inferences
 22 from those facts, are “plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S.
 23 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

24 **IV. DISCUSSION**

25 Plaintiff’s Complaint alleges that Defendants violated his Fourteenth Amendment due
 26 process rights by not allowing Plaintiff’s witness to testify at a disciplinary hearing that resulted
 27 in the loss of canteen privileges, prison employment, phone privileges and good time credit.
 28 Defendants argue that Plaintiff’s Complaint should be dismissed for failure to allege a liberty

1 interest and failure to state a claim upon which relief can be granted.

2 To state a Fourteenth Amendment due process claim, a plaintiff must adequately allege
3 that he was denied a specified liberty interest and that he was deprived of that liberty interest
4 without the constitutionally required procedures. Swarthout v. Cooke, 562 U.S. 216, 219, 131 S.
5 Ct. 859, 178 L.Ed. 2d 732 (2011). The Ninth Circuit has held that there is no constitutional right
6 to canteen items. Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996). In Davis v. Small, the Ninth
7 Circuit held “the Due Process Clause itself does not give rise to a protected liberty interest in a
8 paying prison job, ... or particular phone and yard privileges.” 595 Fed. Appx. 689, 691. Thus,
9 Plaintiff was not deprived of his Fourteenth Amendment Due Process rights when sanctions were
10 imposed on his canteen, employment, and phone privileges.

11 Where a prison disciplinary hearing may result in the loss of good time credits, the inmate
12 must receive: (1) advance written notice of the disciplinary charges; (2) an opportunity, when
13 consistent with institutional safety and correctional goals, to call witnesses and present
14 documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence
15 relied on and the reasons for the disciplinary action. Superintendent, Massachusetts Correctional
16 Institution v. Hill, 472 U.S. 445, 454. The Plaintiff initially lost good time credit as a result of his
17 disciplinary hearing, and such loss could have served as a liberty interest upon which to base his
18 claim. However, upon appeal of the results of the disciplinary hearing, the NDOC restored his loss
19 of good time. Consequently, Plaintiff has no recognized liberty interest upon which to base his
20 claim. His Due Process claim is therefore dismissed. Sandin v Conner, 515 U.S. 472 (1995).

1 **V. CONCLUSION**

2 For the foregoing reasons, **IT IS ORDERED** that Defendant's Motion to Dismiss (ECF
3 No. 12) is **GRANTED** and Plaintiff's Complaint is **DISMISSED** with prejudice.

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5 **DATED:** March 27, 2025.

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RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE